(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. NO. 1033 /2003

PETITIONER :- Vimal Kumar Singh S/o Late Shri R.A. Singh aged 40 years resident of Muktidham Chowk, Naya Sarkanda, Bilaspur (C.G.)

VERSUS

RESPONDENTS :- 1. State of Chhattisgarh
Through : Principal Secretary
Panchayat and Social Welfare
Department, D.K.S. Complex,
Mantralaya, Raipur (C.G.)

2. Collector,
District Bastar
Jagdalpur (C.G.)

P. R. No. 2454/03
Presented by Shri U.C. Pandey
dated 3.3.03

ARY
Dubey
6/10/1-98/
AR 2003
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PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MADAMUS, CERTITORY, PROHIBITION, AND/OR OF ANY OTHER WRIT/ORDER/DIRECTION IN THE SAME NATURE IN THE CIRCUMSTANCES OF THE CASE.

(1) Particulars of the Petitioner :

(132) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1033 OF 2003

Vimal Kumar Singh

versus

State of Chhattisgarh and another

ORDER

Post for 19-1-2007

Sd/-
Satish K. Agnihotri
Judge

18-1-2007

(133)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1033 OF 2003

Petitioner : Vimal Kumar Singh

versus

Respondents : State of Chhattisgarh and another

Present : Mr. R.S.Marhas, counsel for the petitioner.
Mr. V.V.S.Moorthy, Deputy Advocate General with Mr. Arvind Dubey, Panel Lawyer for the State/respondents.

ORDER

(Passed on 19th Day of January, 2007)

This writ petition, filed under Articles 226/227 of the Constitution of India, impugns the order dated 8-3-2000 (Annexure P-1) passed by respondent No.2 – the Collector, District Bastar, Jagdalpur, whereby the petitioner was dismissed from his services.

2. The indisputable facts, in nutshell, are that the petitioner was working as Teacher in the office of the Superintendent, Government Blind and Dumb School, Dharampur, Jagdalpur. In the year 1999, the petitioner, in addition to his duties, was given additional charge of the Superintendent, Observation Home, Jagdalpur and was authorised for withdrawal and distribution of funds by the Joint Director,

Panchayat and Social Welfare Department, Raipur, vide order dated 4-1-1999 (Annexure R-1).

3. According to learned counsel appearing for the State/respondents, the petitioner, while working as Superintendent, Observation Home, Jagdalpur, was charged for misappropriation of a sum of Rs.1,98,000/- by over-writing on the cheques issued by respondent No.2. After the said misappropriation was discovered, the petitioner absconded from his place of posting. Thereafter, the petitioner was placed under suspension vide order dated 7-7-1999 (Annexure R-5), passed by respondent No.2, contemplating departmental action against the petitioner for the alleged misappropriation of fund.

4. Thereafter, a charge-sheet was issued against the petitioner. An enquiry officer was appointed. Mr. A.K.Toppo, Joint Collector, the enquiry officer, without affording an opportunity of hearing to the petitioner, held the charge as proved. The disciplinary authority, agreeing with the enquiry report, dismissed the services of the petitioner under Rule 10(ix) of the Madhya Pradesh/Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'the Rules, 1966').

5. Being aggrieved, the petitioner filed an appeal before the Commissioner, Bastar Division, Jagdalpur, dated 13-10-2002 (Annexure P-2), but the said appeal became infructuous as the post of the Commissioner stands abolished with effect from 31-10-2002. The petitioner, having no other alternative remedy, filed this writ petition for

quashing the order dated 8-3-2000 (Annexure P-1), passed by respondent No.2.

6. The sole contention of the petitioner is that –

(i) The alleged charge-sheet issued was never served on the petitioner in the manner as prescribed under Rule 30 of the Rules, 1966.

(ii) The enquiry was concluded *ex parte* without affording proper opportunity of hearing to the petitioner. The petitioner was not served with the enquiry report before the impugned order of termination was passed.

(iii) Non-service of the charge-sheet and the enquiry report has prejudiced the case of the petitioner, as the petitioner had no occasion to put forward his case by cross-examining witnesses produced by the respondents/employer and otherwise to prove his ignorance before the enquiry officer.

7. Mr. V.V.S.Moorthy, learned Deputy Advocate General with Mr. Arvind Dubey, learned Panel Lawyer appearing for the State/respondents would, *per contra*, submit that the charge-sheet could not be served by a registered post A.D. because the petitioner remained absent from the office. It was further contended that this petition should be dismissed on account of delay for a period of three years.

8. Mr. R.S.Marhas, learned counsel appearing for the petitioner contended that the entire disciplinary proceedings were bad and vitiated as the charge-sheet was not served on the petitioner (delinquent employee). Learned counsel for the petitioner further contended that the entire departmental proceedings, order of termination passed consequent thereupon be quashed as bad and invalid.

9. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto. It is evident that the charge-sheet was not actually served on the petitioner. Affixation of the charge-sheet on the official and permanent residence of the delinquent employee is not sufficient compliance of Rule 30 of the Rules, 1966. Rule 30 of the Rules, 1968 reads as under :-

> "30. Service of orders, notices etc. – Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post."

Rule 30 of the Rules, 1966 prescribes for manner of service. The statutory provision clearly contemplates that order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post. There is no provision for service of any notice or any other process or the charge-sheet, initiated under Rule 14 of these Rules, by any other means including publication.

10. Initiation of the departmental proceedings begins with the service of the charge-sheet. Under Rule 30 of the Rules, 1966, the mode for service of any order, notice, etc. is provided. The notice or order should be served either in person on the Government Servant concerned or through registered post. Admittedly, in the present case, the service was effected by pasting the charge-sheet on the official residence. No attempt was made to serve the charge-sheet at his permanent residence either in person or through registered post A.D., as required under the provisions of Rule 30 of the Rules, 1966.

11. The service of notice by way of affixation or pasting the same cannot be held as a legal or valid way of service. The Supreme Court, in ***M/s Lakshmiratan Cotton Mills Co. Ltd.*** **vs.** ***its Workmen***[1], observed as under :-

> "10. ..... Now admittedly no attempt was made to serve the show-cause notices on any of these twenty-one workmen and the only mode in which service was purported to be effected was by pasting the show-cause notices on the notice board of the mill. We may point out that this mode of service adopted by the appellant was wholly unjustified and that in itself introduces a serious infirmity in the domestic enquiry, unless it can be shown by the appellant that these twenty-one workmen were otherwise aware of the contents of the show-cause notices and no prejudice was occasioned to them by reason of non-service of show-cause notices. ....."

12. In the case of ***Union of India and others*** **vs.** ***Mohd. Ramzan Khan***[2], the Supreme Court held that the disciplinary proceeding is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. The delinquent employee must be served charge-sheet in actual term to enable him to file his reply to the charges before inquiry, recording of evidence and the submissions made on the basis of the material made available to the inquiry officer before his conclusions.

13. In the case of ***Union of India and others*** **vs.** ***K.V. Rankiraman and others***[3], the Supreme Court observed that "it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee."

14. In the case of ***Delhi Development Authority*** **vs.** ***H.C. Khurana***[4], the Supreme Court, with regard to initiation of the departmental proceedings, has held in para 9, as under :-

> "9. The question now, is: What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the

charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations into the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and dispatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings."

15. In the case of ***Union of India and others*** **vs.** ***Dinanath Shantaram Karekar***[5], the Supreme Court observed in para 10, as under:-

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is

called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

16. In the case of ***State of U.P.*** **vs.** ***Shatrughan Lal and another***[6], the Supreme Court observed in para 10, as under:-

"10. It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

17. The Supreme Court in the case of ***Om Prakash Mann*** vs. ***Director of Education (Basic) and others***[7], cited by learned counsel for the respondents, observed in para 9, as under :-

> "9. By now it is well-settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report. The appellant has filed a detailed appeal before the Appellate Authority which was dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for non-furnishing of copy of enquiry report. He has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has participated throughout the enquiry proceedings, he has been heard and allowed to make submission before the Enquiry Committee."

18. The decisions cited hereinabove by learned counsel appearing for the State/respondents are not applicable to the facts of the present case. In the present case, the entire departmental proceedings were bad as the first step by the enquiry proceeding, i.e., actual service of the charge-sheet on the delinquent employee by the State/respondents was not done. The mode adopted by the

State/respondents by alleged affixation of the charge-sheet on the residence of the petitioner is not one of the mode prescribed under Rule 30 of the Rules, 1966. Subsequent publication of notice or communication of dates by registered post A.D. is not sufficient compliance of the first step of the enquiry, leading denial of opportunity to the petitioner, to file reply and put-forward his case effectively before the enquiry officer. The petitioner has successfully established the prejudice caused to him by non-service of charge-sheet on the petitioner. In view of the clear findings with regard to service of the charge-sheet, as above-stated, it is not necessary to go into other points raised by the petitioner.

19. This Court in the case of ***Narendra Kumar Mishra*** vs. ***State of Chhattisgarh and others*** (Writ Petition No.1328 of 2003), decided on 12-12-2006, has held that the entire departmental proceedings are bad if the actual service of the charge-sheet on delinquent employee is not done. The mode of affixation of a charge-sheet on the residence of the petitioner is not one of the mode prescribed under Rule 30 of the Rules, 1966.

20. The petitioner has clearly submitted that he was not gainfully employed elsewhere and has suffered mental agony and financial liability. The respondents are not in a position to controvert the submission of the petitioner. Thus, in the facts and circumstances of the case, wherein the serious allegation of misappropriation of fund is involved, the petitioner is not entitled to grant of any back wages.

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21. As a result and in view of the well settled principle of law, the impugned order dated 8-3-2000 (Annexure P-1) passed by respondent No.2 – the Collector, District Bastar, Jagdalpur is quashed as the departmental enquiry was vitiated. However, this order shall not come in the way of the respondents – authorities to initiate a fresh departmental enquiry, if so advised, in accordance with law.

22. The writ petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (1975) 2 SCC 761
2. AIR 1991 SC 471
3. (1991) 4 SCC 109
4. (1993) 3 SCC 196
5. (1998) 7 SCC 569
6. AIR 1998 SC 3038
7. (2006) 7 SCC 558

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